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OMSAPC ADVISORY CIRCULAR

U.S. ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF AIR AND WASTE MANAGEMENT

A/C NO. 1A

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Subject: Introduction to MSAPC Advisory Circular System and
Description of Regulatory Status of Advisory Circulars

I. Purpose

The purpose of this advisory circular (A/C) is to provide a revised and updated introduction to the organization and scope of the MSAPC Advisory Circular System. Advisory Circulars 1, 1-1, and 1-2 are superseded by this A/C and should be removed from the file of active A/C's.

II. Background

A. It is important that the industries affected by the EPA motor vehicle air pollution control regulations, as well as the interested public, be as fully aware as possible of both the bases upon which administrative discretion will be exercised, and of the procedures through which the program functions. In its early days, this program attempted to meet these needs by sending identical letters to multiple addressees. This system was found to be inefficient both because of the limited, rather than general, policy guidance contained in letters dealing with a specific issue, and the difficulty in referring to such letters in subsequent case-related correspondence.

B. To correct this situation, the MSAPC Advisory Circular System was established in February, 1972. Since that time, the A/C system has shown itself to be a useful tool for communicating with the affected industries in a consistent and effective manner.

C. When Advisory Circular No. 1, the A/C that established the system, was written, it was possible to outline only the types of information that would be conveyed by the circulars. Similarly, while the general boundaries of the areas that would



be covered by A/C's were established, it was not possible to know in advance the full extent to which these documents would be used to interpret and implement this program's regulatory responsibilities.

D. During the past six years, the A/C system has evolved and taken a more definite form. Therefore, the Introduction to the A/C system is being reissued to clarify both the scope of the system as it has developed and the status of the A/C itself within the MSAPC regulatory structure.

III. Discussion

A. It is desirable that the ground rules for any regulatory activity be defined as precisely as possible. The fundamental requirements, of course, are set forth in the enabling legislation that mandates the regulatory function. This mandate, in turn, is implemented through regulations. However, the regulations can never cover every conceivable issue that might arise. In a number of areas, the regulations provide for application of administrative judgment and state neither the specific criteria for the resolution of individual cases, nor the detailed procedures through which the regulatory process is to be carried out.

B. In the broadest sense, the purpose of the MSAPC Advisory Circular System is to explain the requirements established by the regulations and explain how the Administrator intends to exercise his discretion in those cases where the regulations provide for exercise of technical or administrative discretion.

C. In that context, it is emphasized that an A/C is not a regulation and has neither the force nor the effect of a regulation. An A/C may set forth how the agency will generally act in certain cases, but such information does not possess the force of a regulatory requirement. For example, a circular may set out a procedure that advises a manufacturer, "If you do A and B, EPA will approve C." However, the converse of this premise, "If you do not do A and B, EPA will not approve C," is not correct. That is, procedures set forth in A/C's may establish certain preconditions for more-or-less automatic agency approval, but a manufacturer is not precluded by an A/C from pursuing an alternative means of obtaining EPA approval for an action for which such approval is required by the regulations. If a procedure other than that recommended by an A/C is chosen by a manufacturer, however, it may not be possible for EPA to provide the needed approval as rapidly as would have been the case had the A/C's recommendation been followed, since new data and special analyses will ordinarily be needed to make determinations outside the scope of policy and procedure articulated by existing A/C's.



D. Although the information communicated in MSAPC Advisory Circulars is not regulatory in nature, in all cases it represents the coordinated position of the EPA. Therefore, while the MSAPC Advisory Circulars do not, in themselves, have regulatory status, they may be relied upon to reflect deliberate agency policy on the issue at hand.

E. Legislative action, regulatory action, or minor procedural changes may at times cause some item of information contained in an A/C of continuing general applicability to be inaccurate. For example many of the circulars dealing with heavy-duty engines have to some degree been affected by the regulations promulgated on September 8, 1977. Although EPA makes every effort to maintain up-to-date the guidance provided by A/C's, from time to time there may be temporary inconsistencies. When a circular appears to be at variance with the letter or spirit of the law or regulations, the law or regulation is governing -- not the A/C. If a case or issue of interest to a manufacturer involves such inconsistency, the manufacturer should, before initiating action in reliance on an A/C, consult a member of the certification team assigned to him to determine if the policy and procedures set out by the A/C are current.

IV. Numbering

A. Advisory circulars on new subjects are numbered sequentially.

B. A superseded A/C will be replaced by a circular with the same number but carrying an alphabetic suffix, e.g., A/C 15 was replaced with A/C 15A. If a further complete revision were to become necessary, A/C 15A would be superseded by A/C 15B. Only the last such circular issued remains in effect; all previous versions are obsolete.

C. An amplified advisory circular will be supplemented by an A/C with the same number (and alphabetic suffix, if applicable,) but carrying a numerical suffix. For example, A/C 51 has been supplemented by A/C 51-1, and A/C 4A has been supplemented by A/C 4A-1. A second amplification of A/C 51 would be numbered A/C 51-2. In such cases, all three circulars would remain in effect.



V. Issuance of MSAPC Advisory Circulars

The majority of A/C's will deal with issues related to the annual demonstration of compliance of new motor vehicles and engines that is required by Sec. 206(a)(1) of the Clean Air Act, and will therefore be issued over the signature of the Deputy Assistant Administrator for Mobile Source Air Pollution Control. However, the system is available for communication to the regulated industry from other EPA offices that have responsibilities related to the control of mobile source air pollution, such as the EPA Office of Enforcement, and such A/C's would be signed by the appropriate EPA official.

Mobile Source Air Pollution Control